

RESOLUTION NO. 2012-13

**RESOLUTION OF THE VILLAGE COMMISSION OF
THE VILLAGE OF BISCAYNE PARK SELECTING
MAGNA CONSTRUCTION AS THE CONTRACTOR
FOR THE ADDITIONAL STORMWATER DRAINAGE
PROJECTS FUNDED UNDER THE AVAILABLE
BALANCE OF APPROPRIATED FUNDS FROM THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION; AND FOR THE VILLAGE MANAGER
AND TO EXECUTE THE AGREEMENT THAT PIGGY
BACKS OFF OF THE TOWN OF MIAMI LAKES
CONTRACT WITH MAGNA CONSTRUCTION, FOR AN
AMOUNT NOT TO EXCEED THE BALANCE OF THE
APPROPRIATED FUND BALANCE; PROVIDING FOR
AN EFFECTIVE DATE**

WHEREAS, in 2009, the Village was granted an appropriation from the State of Florida Department of Environmental Protection for Stormwater improvements in the amount of \$200,000; and

WHEREAS, the State funding required a dollar for dollar match which was available to the Village form CITT (Citizens Independent Transportation Trust) funding making \$400,000.00 the total amount available for Stormwater improvements; and,

WHEREAS, to date, the Village has expended \$170,701.00 with the completion of the Phase III Stormwater Drainage Project, plus one additional location in the Village apart from the route of Phase III, leaving a balance of \$229,299.00, of available appropriated funds; and,

WHEREAS, the Village seeks to utilize every cent of the funding available and has identified ten (10) additional locations throughout the Village that are in need of Stormwater, drainage and road (paving) improvements; and,

WHEREAS, the office of the Village Manager has worked closely with the state to insure that all quarterly reports, required documents and project updates were submitted in a timely manner to insure we maintain the appropriated funding during a time where several municipalities state wide have lost their funding under Governor Rick Scott's review of every state dollar expended and appropriated; and,

WHEREAS, the office of the Village Manager has maintained constant communication with the state and on December 22, 2011, was notified by the state that an extension until June 30, 2012 was granted to complete the ten (10) additional locations and to utilize the balance of the funds available; and

WHEREAS, Magna Construction was the contractor selected through a competitive bid process to successfully complete the Phase III Stormwater Drainage Project; and

WHEREAS, Magna Construction has been selected as one of the responsive and cost effective firms in both the City of Aventura and Town of Miami Lakes to perform comprehensive street improvements and repairs, and the Village seeks to piggy-back off of the Town of Miami Lakes contract and utilize Magna Construction to complete the scope of work for the ten (10) additional locations in the Village that are in need of Stormwater, drainage and road improvements, as completing a Village public procurement would delay work by at least an additional three months due to advertising, selection, and negotiating a contract, and would put the Village right up against the June 30, 2012 deadline; and,

1 WHEREAS, as Magna Construction provided excellent services to the Village under
2 Phase III, and as other cities have recently selected Magna Construction as the lowest and
3 most responsive bidder for Stormwater, drainage and road improvement construction
4 services, the Village may piggyback off of those service contracts.
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7 NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF
8 THE VILLAGE OF BISCAIYNE PARK, FLORIDA
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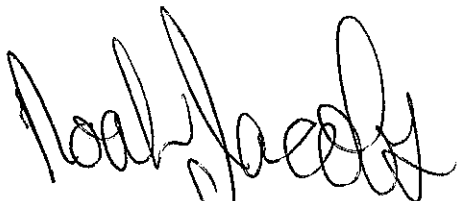
10
11 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed
12 as being true and correct and hereby made a specific part of this Resolution upon adoption
13 hereof.
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15 **Section 2.** Magna Construction is selected as the contractor for completion of
16 the ten (10) additional locations in the Village that are in need of Stormwater and drainage
17 improvements, for which funding has been confirmed by the State of Florida Department of
18 Environmental Protection to be available from the balance of the appropriated funds and an
19 extension granted to June 30, 2012.
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21 **Section 3.** The Village Manager and the Village Attorney are hereby authorized
22 to piggy back off of the Town of Miami Lakes contact with Magna Construction, for Magna
23 to provide the ten (10) additional Stormwater drainage projects for an amount not to exceed
24 the balance of the appropriated fund balance. The Town of Miami Lakes contract, the
25 Village's complete listing of all projects associated with this appropriation and photographs
26 of the ten (10) new locations, in substantial form, are attached and incorporated by reference
27 into this resolution as exhibit 1.
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29 **Section 4.** This Resolution shall become effective upon adoption.
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31 PASSED AND ADOPTED this 7th day of February, 2012.

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39 _____
40 Noah Jacobs, Mayor
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**The foregoing resolution upon
being put to a vote, the vote was as
follows:**

Mayor Jacobs: No
Vice Mayor Watts: Yes
Commissioner Anderson: Yes
Commission Cooper: Yes
Commissioner Ross: Yes

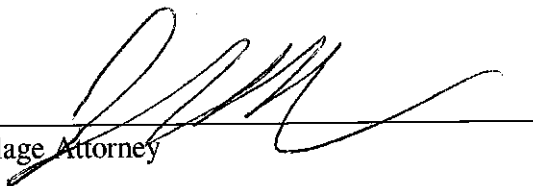
42 Attest:

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48 Maria C. Camara, Village Clerk
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1 Approved as to form:

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Village Attorney

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, is written over a solid horizontal line.

**AGREEMENT FOR CERTAIN STORMWATER DRAINAGE &
ROAD IMPROVEMENT SERVICES**

This Agreement made and entered into this 7th day of February, 2012, by and between the Village of Biscayne Park, as a political subdivision of the State of Florida, hereinafter referred to as "Village" and Magna Construction, Inc., a Florida Corporation, hereinafter referred to as "Contractor," possessing FEIN 65-0867791.

WHEREAS, in 2009, the Village was granted an appropriation from the State of Florida Department of Environmental Protection for Stormwater improvements in the amount of \$200,000; and

WHEREAS, the State funding required a dollar for dollar match which was available to the Village form CITT (Citizens Independent Transportation Trust) funding making \$400,000.00 the total amount available for Stormwater improvements; and,

WHEREAS, to date, the Village has expended \$170,701.00 with the completion of the Phase III Stormwater Drainage Project, plus one additional location in the Village apart from the route of Phase III, leaving a balance of \$229,299.00, of available appropriated funds; and,

WHEREAS, the Village seeks to utilize every cent of the funding available and has identified ten (10) additional locations throughout the Village that are in need of Stormwater, drainage and road (paving) improvements; and,

WHEREAS, the office of the Village Manager has worked closely with the state to insure that all quarterly reports, required documents and project updates were submitted in a timely manner to insure we maintain the appropriated funding during a time where several municipalities state wide have lost their funding under Governor Rick Scott's review of every state dollar expended and appropriated; and,

WHEREAS, the office of the Village Manager has maintained constant communication with the state and on December 22, 2011, was notified by the state that an extension until June 30, 2012 was granted to complete the ten (10) additional locations and to utilize the balance of the funds available; and

WHEREAS, Magna Construction was the contractor selected through a competitive bid process to successfully complete the Phase III Stormwater Drainage Project; and

WHEREAS, Magna Construction has been selected as one of the responsive and cost effective firms in both the City of Aventura and Town of Miami Lakes to perform comprehensive street improvements and repairs, and the Village seeks to piggy-back off of the Town of Miami Lakes contract and utilize Magna Construction to complete the scope of work for the ten (10) additional locations in the Village that are in need of Stormwater, drainage and road improvements, as completing a Village public procurement would delay work by at least an additional three months due to advertising, selection, and negotiating a contract, and would put the Village right up against the June 30, 2012 deadline; and,

WHEREAS, as Magna Construction provided excellent services to the Village under Phase III, and as other cities have recently selected Magna Construction as the lowest and most responsive bidder for Stormwater, drainage and road improvement construction services, the Village may piggyback off of those service contracts; and,

WHEREAS, the Village Manager and the Village Attorney are hereby authorized to piggy back off of the Town of Miami Lakes contract with Magna Construction, for Magna to provide the ten (10) additional Stormwater drainage projects for an amount not to exceed the balance of the appropriated fund balance; and,

WHEREAS, the Town of Miami Lakes contract with the Village's complete listing of all projects associated with this appropriation and photographs of the ten (10) new locations, in substantial form, and the below agreement contains the substantive requirements of the contract for Miami Lakes, but changing the Town of Miami Lakes for the Village of Biscayne Park and formatting the contract to the Village's specifics as to notice requirements, etc.

NOW THEREFORE, in consideration of \$10.00, the mutual covenants and conditions contained herein, the receipt of which is acknowledged, the parties agree as follows:

1. **Scope of Services** – The Scope of Services will include the items listed in attached Exhibit 1, which exhibit is incorporated by reference into this Agreement.

As per the terms and conditions of this agreement, all attachments, including the Town of Miami Lakes contract terms included in ITB No. 2011-05, and the ITB bid response by Contractor, under the Town of Miami Lakes contract dated June 14, 2011, which documents are attached and incorporated by reference into this agreement as composite Exhibit 2, which exhibit shall include the pricing as proposed by Contractor in Exhibit 2 (consistent with the pricing provided the Town of Miami Lakes), and all other information required or provided, etc., shall become a part of this agreement.

2. **Specifics as to contract terms from ITB No. 2011-05.** Contractor shall comply with all contract terms in ITB no. 2011-05, specifically:

- A. Section 3 General Terms and Conditions; and
- B. Section 4 Special Terms and Conditions
- C. Section 2.7 Public Crimes Affidavit compliance

3. **Term of Agreement.** The term of this Agreement shall be as provided for under section 4.12 of the ITB 2011-05, upon the award of projects. The Date of Commencement is the effective date as indicated in the Notice to Proceed and the Date of Commencement. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time by written agreement between both parties, subject, however, to other provisions of this Agreement.

4. **Insurance and Bonds.**

a. Contractor shall name the Village as an additional insured on Contractor's insurance policies. And comply with the terms of ITB no. 2011-05 at Section 3.5 The Contractor shall furnish to the Village certificates of insurance evidencing the insurance coverages specified by this Section at the request of the Village Manager and required under the Town of Miami Lakes ITB no. 2001-05. The required certificates of insurance shall name the type of policy provided and shall list the Village as an additional insured, refer specifically to this Agreement, and state that such insurance is as required by this Agreement.

b. The Contractor shall name the Village, and its respective officers, agents, servants and employees, as an additional insured on the Comprehensive General Liability Policy. This

insurance policy shall state, after the above-referenced additional named insured that "this coverage is primary to all of the coverage the additional insured may have." Proof of insurance shall be provided at the time of the signing of this Agreement and incorporated herein as exists there forth in full.

c. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the Village prior to the commencement of this Agreement. The required insurance coverage is not to cease and is to remain in full force throughout the Term of this Agreement. All policies must be endorsed to provide Village with at least thirty (30) calendar days' notice of cancellation, non-renewal, or adverse change and/or restriction. If any of the insurance coverage will expire prior to the termination of this Agreement, copies of renewal policies shall be furnished at least fifteen (15) calendar days' prior to the date of their expiration. The Village shall be named as an additional insured. Receipt of Certificates or other documentation of insurance or policies, or copies of policies by the Village or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of Contractor's obligation to fulfill the insurance requirements herein.

d. Any insurance required of Contractor pursuant to this Agreement must also be required by any sub-contractor of Contractor in the same limits and with all requirements as provided herein, including naming the Village as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Contractor and provided proof of such coverage is provided to Village. The Contractor and any sub-contractor of Contractor shall maintain such policies during the term of this Agreement.

e. Contractor shall name the Village as an additional insured on each of the policies required herein, with the exception of the Contractor's Worker's Compensation policy.

f. Upon activation and within ten (10) days of a Notice to Proceed, for each event, by the Village, Contractor shall provide the Village with a Performance and Payment Bond as provided in the Town of Miami Lakes IFB 2011-05. Village reserves the right to reasonably increase bond amount based upon the severity of the event. Final release of bonding requirement by the Village is contingent upon the following: Contractor submitting final invoices; all work has been completed to the Village's satisfaction; rehabilitation of all sites to the Village's satisfaction; release of liens received from all of Contractor's subcontractors, agents, assigns, and/or vendors; and all other identified issues have been resolved to the Village's satisfaction.

5. **Entire Agreement.** This Agreement contains the entire agreement of the parties and there are no other binding promises or conditions in any other Agreement whether oral or written.

6. **Litigation Venue.** The parties waive the privilege of venue and agree that all litigation between them shall take place in the state Court in Miami-Dade County, Florida. The parties waive the right to a jury trial as to any and all disputes.

7. **Indemnification.** The Contractor does hereby agree to defend, indemnify and hold the Village, its Council, Village Manager, agents, employees, attorneys, successors and assigns harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Contractor, its agents, employees, volunteers, guests and invitees in connection with this Agreement. The provisions of this Section shall expressly survive any expiration or termination of this Agreement and under Town of Miami Lakes IFB no. 2011-05.

8. **Non-Discrimination.** In the operations of the Concession, Contractor, its employees, agents, volunteers, and any parties under the direction or control of Contractor may not discriminate against any person on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation by refusing to furnish to such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. In the performance of this Agreement, Contractor, its employees, agents, volunteers, and any parties under the control or direction of Contractor may not discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation.

9. **Records/Village's Right to Inspect.**

a. Village has the right at all reasonable times to conduct whatever inspections the Village deems reasonably necessary to determine if Contractor is complying with the terms and conditions of this Agreement.

b. All records, books, documents, papers and financial information (the "Records") that result from Contractor's services under this Agreement shall be the property of the Village. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

10. **Third Parties.** Neither the Contractor nor Village intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement and that no third-party shall be entitled to assert a claim against either of them based upon this Agreement.

11. **Notices.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") under Miami Lakes IFB Section 3.2, shall be modified to the below contact persons and addresses (or to any other address which either party may designate by Notice):

To Contractor: Magna Construction, Inc.
3355 NW 154 Terrace
Miami, Florida 33054

Alternate address:
Post Office Box 327418
Ft. Lauderdale, Florida 3332

To Village: Ana Garcia, Village Manager
Village of Biscayne Park
640 NE 114th Street
Biscayne Park, FL 33161
Telephone: (305) 899 8000
Telephone: (305) 891 7241

With a copy to: John J. Hearn
Law Offices of John J. Hearn, P.A.

1917 NW 81st Avenue
Coral Springs, Florida 33071
Telephone: (305) 360 3547
Facsimile: (954) 227 7321

12. Entire Agreement/Modification/Amendment.

a. This Agreement sets forth the entire agreement between Village and Contractor with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties.

b. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed with the same formality as this document.

13. Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the Agreement between the parties.

14. Waiver. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

15. Independent Contractor. Nothing herein contained shall be deemed in any way to constitute Village or Contractor a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, Contractor shall be considered an independent Contractor and not an employee or agent of the Village. The Contractor is an independent contractor under this Agreement and any project agreements and nothing in this Agreement shall create any association, partnership, or joint venture between the parties, or any employer-employee relationship. Personal services provided by the consultant shall be by employees of the consultant and subject to supervision by the consultant, and not as officers, employees, or agents of the village, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies, and other similar administrative procedures applicable to services rendered under this Agreement or any project agreements shall be those of the Contractor.

16. Miscellaneous.

a. It is further expressly understood and agreed that no real or personal property is leased to Contractor and that Contractor shall comply with each and all of the undertakings, provision, agreements, covenants, stipulations and conditions contained herein.

b. This Agreement may be signed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original.

c. All terms, conditions, covenants and obligations of Village and Contractor hereunder shall survive the termination or expiration of this Agreement as necessary and appropriate for such parties to fulfill their obligations that accrued during the Term of this Agreement.

d. Contractor and its agents, employees or volunteers shall not be permitted to consume, sell or otherwise possess any alcoholic beverages, tobacco products or other such products as determined by the Village, when using the Concession.

e. In the event a court must interpret any word or provision of this contract, the word or provision shall not be construed against either party by reason of drafting or negotiating this contract.

17. **Warranty Of Authority.** The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this Agreement.

18. **ITB.** Contractor agrees to comply with any provisions of the Miami Lakes ITB which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Contractor during the ITB process.

19. **Compliance with Law.** Contractor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

20. **Public Entities Crime Statement.** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S. for category two for a period of 36 months from the date of being placed on the convicted vendor list. Contractor affirms compliance with this requirement for the duration of the underlying Agreement. If at any time during the contract period, Contractor is convicted of a public entity crime, the Contractor's contract shall immediately terminate.

IN WITNESS WHEREOF the parties hereto have executed this Agreement this 7th day of February, 2012.

Village:

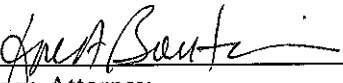
ATTEST:

Village of Biscayne Park, a Florida
municipal corporation

By: Maria C. Camara
Maria Camara, Village Clerk

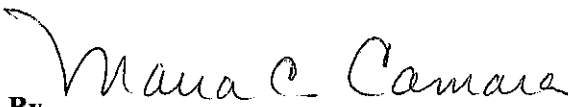
By: Ana M. Garcia
Ana M. Garcia, Village Manager

Approved as to form and legality for the use
and benefit of the Village of Biscayne Park
only:



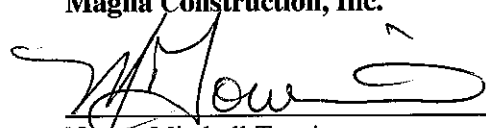
Village Attorney

ATTEST

By 

Maria C. Camara

**CONTRACTOR –
Magna Construction, Inc.**



Name: Mitchell Tourino
Title: President

[END OF DOCUMENT]